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EXAMINER

DELCOTTO, GREGORY R

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/530,372

Applicant(s)

HARIHARAN ET AL.

Examiner

Gregory R. Del Cotto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Applicant's arguments and amendments filed 5/14/06 have been entered.

Claims 1-20 are pending.

#### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### **Objections/Rejections Withdrawn**

The following objections/rejections set forth in the Office action mailed 2/13/06 have been withdrawn:

The objection to claims 1-20 because of minor informalities has been withdrawn.

The rejection of claims 1-20 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, has been withdrawn.

The rejection of claims 1-7, 10-17, and 20 under 35 U.S.C. 102(b) as being anticipated by de Buzzaccarini (US 4,767,563) has been withdrawn.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

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granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, 4-7, 10-12, 14-17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iding (US 4,758,377) in view of WO 96/35771.

Iding teaches improved stable liquid compositions, particularly for use as hard surface cleansers, comprise 1 to 10% of a mixture of sodium C12-C18 paraffin sulfonate and sodium salt of linear alkyl benzene sulfonate, 0.5 to 10% of terpenes, 0.5 to 3% of benzyl alcohol, 0.4 to 1% of acrylic acid polymer thickeners, 1 to 50% by weight of abrasives, and 0.03 to 0.5% of viscosity enhancer compounds. The compositions are viscous, substantially phase stable, and provide excellent cleaning of both greasy and particulate soils from hard surfaces without streaking or filming. See Abstract and column 2, lines 1-25. Suitable abrasives include calcium carbonate, Fuller's earth, magnesium carbonate, etc. See column 3, line 60 to column 4, line 10. The pH of the compositions is generally in the range of 8-12 and caustics such as sodium hydroxide and sodium carbonate can be used to adjust the pH. See column 4, lines 50-60. The compositions typically contain up to about 90% by weight water. See

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column 5, lines 30-45. Note that, additional solvents suitable for use in the compositions include solvents disclosed in US 4,414,128. See column 3, lines 40-55.

Iding does not teach the use of a clay thickener nor a cleaning composition containing an alkaline source, a clay thickener, a further thickener, a solvent, an abrasive, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

'771 teaches a thickened stable hard surface cleaner comprising by weight from about 10 to about 30% abrasive particles, from about 0.5 to about 2.5% of a chlorine-containing bleach, from about 0.5 to about 3% of a thickening system comprising a cross-linked polyacrylate resin and a synthetic smectite clay, from about 0.25 to about 2% of a bleach stable surfactant system, from 0 to about 3% of an electrolyte, and sufficient amount of sodium or potassium hydroxide to attain a pH in the range of 11.5 to 13.5. See Abstract. Suitable polyacrylate polymers include those under the trademark Carbopol. See page 6, lines 20-30. The addition of the synthetic smectite clay to the composition provides both improved rinsability and improved stability, particularly over long periods of time. See page 7, lines 15-30. Suitable bleach-stable surfactants include betaines, sarcosinates, taurates, alkyl sulphates, alkyl sulphonates, etc. Preferred alkyl sulphonates are sold under the trademark Hamposyl SAS. See page 8, line 5 to page 9, line 10.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a clay thickener in the composition taught by Iding, with a

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reasonable expectation of success, because '771 teaches that the use of clay in a similar cleaning composition provides improved rinsability and improved stability.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition containing an alkaline source, a clay thickener, a further thickener, a solvent, an abrasive, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Iding in combination with '771 suggests a cleaning composition containing an alkaline source, a clay thickener, a further thickener, a solvent, an abrasive, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Note that, with respect to the log reduction properties as recited by the instant claims, the Examiner asserts that the compositions suggested by Iding in combination with '771 would suggest compositions having the same log reduction properties as recited by the instant claims because Iding in combination with '771 suggest compositions containing the same components in the same amounts as recited by the instant claims.

Claims 8, 9, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iding (US 4,758,377) in view of WO96/35771 as applied to claims above 1, 2, 4-7, 10-12, 14-17, and 20, and further in view of Goffinet (US 4,414,128).

Iding and '771 are relied upon as set forth above. However, neither reference teaches the use of the specific glycol ether in addition to the other requisite components of the composition as recited by the instant claims. However, note that, Iding states that polar solvents may be used including those disclosed in Goffinet (US 4,414,128).

Goffinet teaches liquid detergent compositions, particularly for use as hard surface cleaners, comprising 1% to 20% surfactant, 0.5 to 10% mono- or sesquiterpenes, and 0.5% to 10% of a polar solvent, preferably benzyl alcohol. See Abstract. Suitable polar solvents include mono C6-C9 and di-C4-C9 alkyl or aryl ethers of ethylene glycol such as hexyl, benzyl and phenyl Cellosolves, etc. See column 9, lines 1-20.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a solvent such as ethylene glycol monohexyl ether in the composition taught by Iding, with a reasonable expectation of success, because Goffinet teaches the use of ethylene glycol monohexyl ether in a similar hard surface composition and further, Iding teaches that other suitable solvents include polar solvents as taught by Goffinet.

Claims 1-7, 10-17, and 20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over de Buzzaccarini (US 4,767,563).

De Buzzaccarini teaches liquid compositions for use as hard surface cleaners, comprising terpenes, benzyl alcohol, and abrasives. See Abstract. Suitable abrasives include calcium carbonate, etc. Suitable surfactants include anionic surfactants, etc.



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See column 3, lines 58-69. Thickeners may also be used in the compositions and include polyacrylates, xanthan gums, carboxy methyl celluloses, swellable smectite clays, etc., and mixtures thereof. See column 4, lines 40-60 and claim 9. The compositions are preferably formulated in the alkaline pH range of from 8 to 11 and generally contain up to about 90% by weight of water. See column 5, lines 1-25.

Specifically, de Buzzaccarini teaches compositions containing 2.5% linear alkylbenzene sulfonate, 2% sodium carbonate, 1.5% benzyl alcohol, 20% calcium carbonate, 0.7% polyacrylic acid, water, etc. See column 7, lines 1-25. Note that, with respect to the log reduction properties as recited by the instant claims, the Examiner asserts that the compositions specifically disclosed by de Buzzaccarini would inherently have the same log reduction properties as recited by the instant claims because de Buzzaccarini teach compositions containing the same components in the same amounts as recited by the instant claims. de Buzzaccarini discloses the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of de Buzzaccarini anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of de Buzzaccarini are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed log reduction properties of the composition in order to provide the optimum cleaning and disinfecting properties to the composition because de Buzzaccarini teaches that the amount of required components added to the composition may be varied.

Claims 8, 9, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Buzzaccarini as applied to claims 1-7, 10-17, and 20 above, and further in view of Goffinet (US 4,414,128).

De Buzzaccarini is relied upon as set forth above. However, de Buzzaccarini does not teach the use of the specific glycol ether in addition to the other requisite components of the composition as recited by the instant claims.

Goffinet is relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a solvent such as ethylene glycol monohexyl ether in the composition taught by de Buzzaccarini, with a reasonable expectation of success, because Goffinet teaches the equivalence of ethylene glycol monohexyl ether to benzyl alcohol as a solvent in a similar hard surface composition and further, de Buzzaccarini teaches the use of benzyl alcohol.

### ***Response to Arguments***

With respect to the rejections using Ilding in combination with '771, Ilding in combination with '771 and further in combination with Goffinet, or De Buzzaccarini, Applicant states that the claims now require that a particular degree of antimicrobial efficacy need be provided by the compositions as defined by the claims and that none of these documents teach or suggest in even the remotest fashion that the compositions would provide at least the same degree of antimicrobial efficacy as is now claimed. In response, note that, the Examiner maintains, as stated above, the references or combination of references would suggest and/or teach compositions

having the same log reduction properties as recited by the instant claims because the references or combination of references teach compositions containing the same components in the same amounts as recited by the instant claims. Note that, with respect to the 102/103 rejection set forth above over de Buzzaccarini, a rejection under 35 USC 102/103 can be made when the prior art product seems to be identical except that the prior art is silent as to an inherent characteristic; once a reference teaching a product appearing to be substantially identical is made the basis of a rejection, and the Examiner presents evidence or reasoning tending to show inherency, the burden shifts to the applicant to show an unobvious difference. See MPEP 2111. Furthermore, there is no requirement that a person of ordinary skill in the art would have recognized the inherent disclosure at the time of invention, but only that the subject matter is in fact inherent in the prior art reference. *Schering Corp. v. Geneva Pharm. Inc.*, 339 F.3d 1373, 1377, 67 USPQ2d 1664, 1668 (Fed. Cir. 2003). See MPEP 2112.

With respect to the rejections using Ilding in combination with '771 and/or Goffinet, the Examiner asserts that even though Ilding does not explicitly disclose the disinfectant properties of the compositions, the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. Note that, while there must be motivation to make the claimed invention, there is no requirement that the prior art provide the same reason as the applicant to make the

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claimed invention. In re Linter, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972). See MPEP 2144.

With respect to '771 and Goffinet, the Examiner maintains that these references are secondary references relied upon for their teaching of clay thickener and specific solvents, respectively. The Examiner maintains that one of ordinary skill in the art would clearly have been motivated to use a clay thickener in the composition taught by Iding, with a reasonable expectation of success, because '771 teaches that the use of clay in a similar cleaning composition provides improved rinsability and improved stability. Additionally, the Examiner maintains that one of ordinary skill in the art would clearly have been motivated to use a specific solvent in the compositions taught by Iding or de Buzzaccarini, with a reasonable expectation of success, because Goffinet teaches the use of ethylene glycol monohexyl ether in a similar hard surface composition and further, Iding or de Buzzaccarini teach the use of polar solvents in general.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Gregory R. Del Cotto  
Primary Examiner  
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GRD  
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